

FILED
U.S. DISTRICT COURT

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

2008 JAN 14 A 9:58

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

DALE STEVENS,

Plaintiff,

vs.

CLARK A. McCLELLAN,

Defendant.

ORDER ADOPTING REPORT
AND RECOMMENDATION

Case No. 2:06 CV 215 TC

This case was referred to United States Magistrate Judge Paul M. Warner pursuant to 28 U.S.C. § 636(b)(1)(B). Before the court is Plaintiff Dale Steven's motion to dismiss Clark A. McClellan's counterclaim.

Judge Warner issued his Report and Recommendation on November 19, 2007.¹ The parties were given ten days to object to the Report and Recommendation and were cautioned that failure to file an objection could constitute a waiver of those objections on subsequent appellate

¹The extensive background of this case is contained in Judge Warner's Report and Recommendation and will not be repeated in this order except to note that Defendant filed a Notice of Motion to Consolidate on May 18, 2007, giving notice to the court that he had filed a motion to consolidate in another case pending in this court. See *Burbank v. United States District Court of Utah, et al.*, 2:04 CV 742 SPF (D. Utah).

In that motion, Defendant is seeking to consolidate this case with *Burbank* because the cases involve common parties and deal with common questions of law and fact. That motion to consolidate is still pending in *Burbank*. Plaintiff filed an "Affidavit in Oppashation [sic] to Consolidate and Demand to Dismiss the Counterclaim." The court will not consider Plaintiff's Opposition as it was procedurally incorrect for Plaintiff to file an opposition in this case because consolidation is pending in the *Burbank* case. Accordingly, any argument Plaintiff makes in opposition to consolidation is not relevant to a ruling in this case.

review.² No objections have been filed.

The court has conducted a *de novo* review of Judge Warner's recommendation and agrees that it is correct in all respects. Accordingly, the Report and Recommendation is adopted as the order of this court. Plaintiff's motion to dismiss Defendant's counterclaim is DENIED. Plaintiff is notified that his opposition to Defendant's motion to consolidate in *Burbank* will not be considered by this court and that said opposition should be filed in *Burbank*.

DATED this 14th day of January, 2008.

BY THE COURT:

A handwritten signature in black ink that reads "Tena Campbell". The signature is written in a cursive, flowing style.

TENA CAMPBELL
Chief Judge

²The date for filing objections was extended to November 30, 2007, by Chief Judge Tena Campbell.